


*ACT, Inc. v. Worldwide Interactive Network, Inc.*  
U.S. District Court for the Eastern District of Tennessee  
Case No. 3:18-cv-00186-TRM-HBG

**EXHIBIT C**

**PLAINTIFF AND COUNTER-DEFENDANT ACT, INC.'S  
OPPOSITION TO MOTION TO DE-DESIGNATE**

**Important Note: Offers which impose conditions OR that modify material requirements OR that change the specifications or terms and conditions of this Solicitation in any manner may be rejected.**

	<b>State of South Carolina</b>  Request for Proposal	Solicitation:	5400014577
		Date Issued:	11-14-2017
		Procurement Officer:	KATHY SANTANDREU
		Phone:	803-896-5304
		E-Mail Address:	ksantandreu@mmo.sc.gov
		Mailing Address:	SFAA, Div. of Procurement Services, MMO 1201 Main Street, Suite 600 Columbia SC 29201

DESCRIPTION: **Career Ready Test**

USING GOVERNMENTAL UNIT: **Statewide Term Contract**

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **12/22/2017 11:00:00** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **11/30/2017 10:00 AM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **RESPONSES SHOULD BE SUBMITTED ON-LINE. ONLY ONLINE SUBMISSIONS WILL BE CONSIDERED. SEE ALSO ON-LINE BIDDING STRUCTION CLAUSE AND SUBMITTING CONFIDENTIAL INFORMATIO CLAUSE.**

CONFERENCE TYPE: <b>Not Applicable</b> DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: <b>Not Applicable</b>
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AWARD & AMENDMENTS	Award will be posted on <b>1/26/2018</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

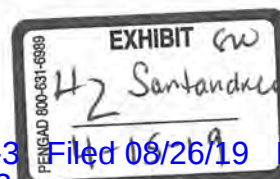
NAME OF OFFEROR  <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED
TITLE  <small>(business title of person signing above)</small>	STATE VENDOR NO.  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
PRINTED NAME  <small>(printed name of person signing above)</small>	STATE OF INCORPORATION  <small>(If you are a corporation, identify the state of incorporation.)</small>

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)

☐ Sole Proprietorship ☐ Partnership ☐ Other \_\_\_\_\_

☐ Corporate entity (not tax-exempt) ☐ Corporation (tax-exempt) ☐ Government entity (federal, state, or local)

COVER PAGE - ON-LINE ONLY (MAR. 2015)



## PAGE TWO

(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent.) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address <b>(check only one)</b>	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address <b>(check only one)</b>

ACKNOWLEDGMENT OF AMENDMENTS							
Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)

PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): **PREFERENCES DO NOT APPLY**

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: **PREFERENCES DO NOT APPLY**

\_\_\_\_\_ In-State Office Address same as Home Office Address \_\_\_\_\_ In-State Office Address same as Notice Address **(check only one)**

PAGE TWO (SEP 2009)

End of PAGE TWO



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## **I. SCOPE OF SOLICITATION**

### **ACQUIRE SERVICES (JAN 2006) (modified)**

It is the intent of the Materials Management Office to establish a State Term Contract to provide a turnkey solution, to include Contractor administration, scoring, and reporting, for an off-the-shelf software of career readiness skills and aptitudes. This career readiness assessment may be administered to approximately 70,000 students and adults across the state annually and include both online and paper administrations. Use of this contract is mandatory for state agencies in accordance with the terms and conditions included herein. Use by local Using Governmental Units (UGU) is optional.

### **MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006)**

Start date: 2/5/2018 End date: 2/4/2023. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

The maximum contract period shall be for five (5) years. This includes an initial one (1) year term and four (4) optional one-year renewal terms. The first administration will be spring 2018 and the final will be spring 2022.

## **II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS**

### **DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)**

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

AMENDMENT means a document issued to supplement the original solicitation document.

AUTHORITY means the State Fiscal Accountability Authority or its successor in interest.

BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover



Page.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

YOU and YOUR means Offeror.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

US or WE means the using governmental unit.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page.

If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

[02-2A003-3]

#### **AMENDMENTS TO SOLICITATION (JAN 2004)**

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov)(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

#### **AUTHORIZED AGENT (FEB 2015)**

All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the **Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.** [02-2A007-1]

#### **AWARD NOTIFICATION (FEB 2015)**

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one

hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-2]

#### **BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)**

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

#### **BID ACCEPTANCE PERIOD (JAN 2004)**

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

#### **BID IN ENGLISH and DOLLARS (JAN 2004)**

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

#### **AUTHORITY AS PROCUREMENT AGENT (DEC 2015)**

The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-3]

#### **CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)**

**GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting an offer, the offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

(i) Those prices;



- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

#### **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)**

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or



commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

[02-2A035-1]

#### **CODE OF LAWS AVAILABLE (JAN 2006)**

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:  
<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:  
<http://www.scstatehouse.gov/coderegs/statmast.php>

[02-2A040-2]

#### **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)**

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

#### **DEADLINE FOR SUBMISSION OF OFFER (JAN 2004) (modified)**

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected.

#### **DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)**

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

#### **DUTY TO INQUIRE (FEB 2015)**

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. **Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation.** Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

#### **ETHICS CERTIFICATE (MAY 2008)**

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants;



and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

#### **IRAN DIVESTMENT ACT - CERTIFICATION (DEC 2015)**

(a) The Iran Divestment Act List is a list published by the Authority pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm> (.). Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-2]

#### **OMIT TAXES FROM PRICE (JAN 2004)**

Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

#### **OPEN TRADE REPRESENTATION (JUN 2015)**

By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

#### **PROTESTS (JUN 2006)**

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

#### **PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)**



Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, **you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity,** unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]

#### **PUBLIC OPENING (JAN 2004)**

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

#### **QUESTIONS FROM OFFERORS (FEB 2015) \*\*VERY IMPORTANT\*\***

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

All questions must be submitted in writing and received by the Procurement Officer for this solicitation no later than **November 30, 2017 at 10:00 AM (EST).**

Please do not wait until the last minute to submit your questions.  
Ask them as they come to you.

Email is the preferred method for submitting questions to the procurement officer, Title the "Subject Line" of your email: "Career Ready Test RFP 5400014577"

Questions". Questions must be submitted in an easily copied format such as MS Word.

Please **DO NOT** insert your questions into tables.

Email: [ksantandreu@mmo.sc.gov](mailto:ksantandreu@mmo.sc.gov)

#### **REJECTION/CANCELLATION (JAN 2004)**

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

#### **RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)**

(a) Bid as Specified. **Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.**

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(f) **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).



#### **SIGNING YOUR OFFER (JAN 2004)**

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

#### **STATE OFFICE CLOSINGS (JAN 2004)**

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.scmnd.org/planandprepare/disasters/severe-winter-weather>  
[02-2A120-3]

#### **SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request,



Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

Note: Submit a redacted copy of your solicitation. Label file "redacted copy". Except for the information removed or concealed, the redacted copy must be identical to your original offer. The redacted copy must reflect the same pagination as the original and show the empty space (or blacked out sections) from which information was redacted.

#### **SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015) (modified)**

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS."

**Paper offers will not be accepted**

#### **TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)**

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer



eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

#### **VENDOR REGISTRATION MANDATORY (JAN 2006)**

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>) [02-2A145-1]

#### **WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)**

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

### **II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS**

#### **CONTENTS OF OFFER (RFP) (FEB 2015) (revised)**

- (a) Offers should be complete and carefully worded and should convey all of the information requested.
- (b) **Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP.** Emphasis should be on completeness and clarity of content.
- (c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. **Each part should be uploaded as separate file (label each file accordingly)**
- (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. **Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.**

**CLARIFICATION (NOV 2007)**

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

**ON-LINE BIDDING INSTRUCTIONS (MAR 2015) (modified – added 3<sup>rd</sup> bullet point under item 3 and added last sentence to item 4)**

**\*\*\*\*\*YOU MUST SUBMIT YOUR BID ONLINE\*\*\*\*\***

(a) Mandatory Registration. You must register before you can submit an offer on line! See clause entitled "VENDOR REGISTRATION MANDATORY."

(b) Steps for On-Line Bidding

1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

2 Follow the general user instructions posted at [www.procurement.sc.gov](http://www.procurement.sc.gov) under the heading "Submitting Offers."

3 Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.

- Only offers with a status of "submitted" have been received by the State.
- Offers with a status of "saved" have not been received.
- Once you submit your offer, if for any reason before bid opening you make updates or changes you must be sure that your status once again says "submitted"

4 Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted (or re-submitted after any changes or updates prior to bid opening). Make sure that it says "submitted"

**Note:** Three (3) files should be uploaded to the online bidding system: the technical proposal, the business proposal and the redacted copy. See also CONTENTS OF OFFER (RFP) (FEB 2015) (revised) on page 15.

**OFFERORS ENCOUNTERING REGISTRATION PROBLEMS SHOULD CONTACT:**

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 1

Monday – Friday 8:00 AM – 4:30 PM

SCEIS Service Desk Vendor Ticket Form

Additional vendor instructions concerning submitting offers can be found at:

<http://procurement.sc.gov/PS/vendor/PS-vendor-submitting-offers.phtml>

**Note: Please do not wait until the last minute to submit your solicitation response.**



**Give yourself enough time in case you run into any issues. HELP DESK WAIT TIME CAN BE LONGER THAN EXPECTED.**

#### **OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)**

In competitive sealed proposals, neither the number nor identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)] [02-2B110-2]

#### **PROTEST - CPO - MMO ADDRESS (JUN 2006) (modified)**

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us) ,

(b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

### **III. SCOPE OF WORK/SPECIFICATIONS**

#### **A. Purpose**

1. The purpose of this request for proposals (RFP) is to delineate the requirements and to solicit proposals for a career readiness assessment. Administration of this career readiness assessment will include, but not be limited to, SCDE 11th grade students, SCDEW job-seeking adults and will provide scores that are valid indicators of career readiness skills and aptitudes. The proposed assessment must be available for large-scale administration beginning in spring 2018.
2. The career readiness assessment must serve the educational needs of South Carolina and the workforce development practitioners in their goal to link job-seekers with employers to meet the business needs in the state. The contractor will work with the state and UGUs to meet the requirements outlined in this RFP. Where necessary, this RFP will draw relevant distinctions between testing students in high schools and testing adults in the workforce.
3. The high school component of this assessment program is mandated in Title 59, Chapter 18 of the South Carolina Code of Laws, (known as the Education Accountability Act or EAA) (posted at <http://www.scstatehouse.gov/code/t59c018.php>) as amended by Act 94 in 2017 (posted at [http://www.scstatehouse.gov/sess122\\_2017-2018/bills/3969.htm](http://www.scstatehouse.gov/sess122_2017-2018/bills/3969.htm)).
4. Act 94 specifies each district must administer a career readiness assessment to all students in grade 11, with one exception. Students who have a disability and their Individualized Education Program (IEP) team has determined (in writing) that taking the assessment would not be aligned with the student's program of study. Otherwise, valid accommodations must be provided according to a student's IEP or 504 plan.
5. Act 94 also specifies that the results of the assessment must be provided to students, schools, and the SCDE. These results will assist in the development of individual graduation plans and

in the selection of courses that align with each student's future ambitions. Additionally, they will be used to meet federal and state accountability requirements.

6. The assessment must meet the requirements of the Individuals with Disabilities Education Improvement Act (IDEA) <http://www.parentcenterhub.org/repository/idea/#exact>.

## **B. Testing**

### **1. Grade 11 Testing**

The South Carolina public school population includes students in:

- a. Eighty-two school districts
- b. Department of Juvenile Justice
- c. South Carolina School for the Deaf and Blind.
- d. Five (5) special schools or programs (Wil Lou Gray, Palmetto Unified, Governor's School for Arts and Humanities, Governor's School for Science and Mathematics, and VirtualSC).
- e. Adult education centers
- f. Virtual schools
- g. Prisons
- h. Group homes
- i. Residential treatment facilities
- j. Home educated through the local school district

South Carolina has approximately 50,000 students in grade 11, in approximately 300 schools. The contractor will work directly with the school districts to coordinate and execute all requirements of the testing program pertaining to the high school assessment.

### **2. Adult Testing**

For costing and planning purposes, the contractor can assume approximately 20,000 adults will test annually for workforce testing.

## **C. Testing Dates**

With the exception of the first year, the contractor must inform (at minimum) SCDE, SCDEW and the school districts of the test dates 12 months before testing occurs.

### **1. Grade 11 Testing dates**

Testing must be schedule during school days—Monday through Friday—in the spring semester of each year. The SCDE prefers that the contractor propose multiple test dates for regular and make-up testing. Each district would select test dates from the dates offered with districts testing on different dates. The state will reimburse districts for one administration for each student. All test dates must be scheduled to allow sufficient time for student responses to be scored and for the SCDE and the districts to receive a data file by June 15th of each year.



## **2. SCDEW and Other UGU Testing Dates and Sites**

The authorized testing sites must allow for the assessment to be given continuously (year-round) rather than on a limited number of days. SCDEW and UGU testing locations will be specified and approved by SCDEW and each UGU. Examples of testing sites may include SC Works Centers, Technical Colleges, Vocational Rehabilitation locations, and other sites approved by SCDEW and UGUs.

### **D. Testing Format**

The career readiness assessment must be available in both online and paper-based format. Both forms must be available to ensure the assessments are accessible to all students and adult examinees, and available to all testing sites. Ratio of online formats to paper formats will not be known until after award.

Testing Special Populations, for Grade 11 Testing (format)

For high school testing, Act 94 specifies that valid accommodations must be provided according to the students' IEP or 504 plan. Appropriate test materials must be provided to ensure students with disabilities can access the test, including any paper forms as needed.

## **E. SCDE, SCDEW and Other UGUs' Roles**

### **1. SCDE Role**

- a. The SCDE's role for this contract will be limited, but will include activities such as ensuring that districts receive available test dates and score reports and that the SCDE and districts receive data files. Districts will pay the contractor for the costs of testing and the SCDE will reimburse districts for those costs. The SCDE will not function as an intermediary between the contractor and the districts.
- b. The administration of the assessment program within each district is the responsibility of a District Test Coordinator (DTC). Each year, the SCDE will provide the contractor with a list of the DTCs with the essential contact information. Each district assigns one School Testing Coordinator (STC) for each school. The contractor will work with districts and schools to effectively coordinate and execute all requirements of the high school testing program.
- c. The contractor must work through the District Test Coordinator. While not desirable, information may be provided directly to schools, but must be provided to District Test Coordinators first. The contractor's program manager must provide communications to the districts regarding major program components, such as, but not limited to the following: a description of the assessment, test dates, test administration procedures, logistical requirements, training, resources, scoring, and reporting.

### **2. SCDEW and Other UGUs' Role**

A coordinator with SCDEW or the UGU will work with contractor staff to set-up all aspects of the administration, scoring, and reporting functions requested in this RFP.

#### **F. Contractor Responsibilities**

In addition to specific responsibilities listed elsewhere in this RFP, contractor responsibilities will include, but are not limited to, the following tasks:

1. Providing all paper-based and online testing materials, including test items, test forms, customized test forms, manuals, score interpretation or user's guides, brochures, and memos.
2. Providing all associated packing, shipping, and distributing of test administration materials, score reports, etc.
3. Providing the platform for administering the assessment online.
4. Providing appropriate customized materials and accommodations for students with disabilities.
5. Providing scoring and reporting services to SCDE, SCDEW and other UGUs
6. Providing summary data files to SCDE, SCDEW and other UGUs as specified in this RFP.
7. Providing separate and combined, annual Technical Reports based on the administration of the assessment in South Carolina for SCDE, SCDEW and other UGUs.
8. Maintaining test security of all secure materials, from both online and paper-based testing, including during delivery and return of the secure materials.
9. Providing information to District Test Coordinators, SCDEW, SCDE and other UGUs about deadlines and responsibilities at least one month before the deadline or the activity (e.g., administration details, timelines/deadlines for key administration components, frequently asked questions and responses, and training schedules).
10. Coordinating, facilitating, and providing training for district, school, and testing site staff.
11. Overall quality control of the entire project, including that of any subcontractors, and ensuring that timelines are met and deliverables are error-free.
12. Providing a project manager with extensive knowledge of the assessment and who has effective managerial skills including the ability to initiate tasks necessary to implement a statewide implementation, follow through on tasks, and ensure the quality of materials and trainings.
13. For high school testing, providing districts and the SCDE with a schedule of key dates each year of the Contract. The schedule of key dates will include dates for training, ordering test materials, online test set-up, test administration, the delivery and return of test materials, scoring, reporting, and data files.

#### **G. Help Desk, Technical Support, or Customer Service**

The contractor is required to provide a help desk or have project staff members available to respond to questions from the DTCs. The contractor must agree to require help desk staff to refer all state policy questions to the SCDE, SCDEW or UGU and prohibit staff from providing guidance which is illegal or contrary to state or federal law, regulations, or SCDE, SCDEW or other UGU's policy. The contractor will be expected to make improvements or adjustments in customer service based on district, SCDE, SCDEW and other UGUs feedback.

#### **H. Invoicing**



Separate invoicing will be required SCDE, SCDEW and UGUs.

**1. Grade 11 Testing Invoicing**

The SCDE will reimburse districts for the costs of the grade 11 career readiness assessment after the SCDE receives a final summary data file from the Contractor. The contractor must specify a procedure by which students tested per district and school can be identified to the SCDE for reimbursement purposes.

**2. SCDEW and other UGU Testing Invoicing**

For SCDEW and other UGU testing, the contractor must invoice SCDEW and UGUs for actual usage of the assessment among the workforce population.

**I. District and State Data Files**

**1. Grade 11 Testing Data Files**

- a. For high school testing, the contractor must provide a state level summary scoring data file, containing all student scores and demographic information such as gender, ethnicity, race/ethnicity, IEP, 504, as well as all non-scored outcomes by type ( e.g., student illness, technical disruption in testing, test administrator error, etc.). The contractor must deliver a complete and correct final state data file to the SCDE by June 15 each year.
- b. The contractor must also deliver a district data file to each district. The format of the data file must be provided to the SCDE by May 15 each year. The SCDE and districts must be allowed to publish the aggregated results online and have permanent and unrestricted use of the state's data for as long as needed by the state.

**2. SCDEW and other UGU Testing Data Files**

For SCDEW and other UGU testing, the contractor must provide a summary data file containing all scores, along with examinee identifying information, from all testing sites on a regular interval (e.g., monthly or approximately monthly). Data file layouts must be provided a week before the data file is delivered. The SCDEW and UGUs must be allowed to publish the aggregated results online and have permanent and unrestricted use of the state's data for as long as needed by the state.

**3. Combined Data File**

In addition to the summary data files for SCDE, SCDEW, and school districts the contractor must also provide a combined data file reflecting results from both the grade 11 and SCDEW testing programs. Other UGU data files must be provided separately to those UGUs.

The SCDEW, SCDE, and UGUs must be allowed to publish the aggregated results online and have permanent and unrestricted use of the state's data for as long as needed by the state.

**J. Technical Reports**

Each year, separate technical reports and a combined technical report will be produced for SCDE, SCDEW and UGUs. The technical report will conform to professional measurement standards as outlined in the Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, 2014).

The technical report must provide the validity evidence needed to support the state's intended test interpretations and uses documented in the RFP. The UGUs will summarize testing data in the publically available section of the Technical Report and secure data will be kept in secure appendixes.

Examples of information and data that have been in previous technical reports include the following:

1. Raw-score and scale-score frequency distributions for total scores, by reporting categories for all examinees and by demographic subgroups
2. Summary results, by reporting category for all examinees and by demographic subgroup
3. Counts of examinees tested
4. Scale-score means and standard deviations
5. Descriptions of score scales (including scaling coefficients) and achievement levels
6. Percentages of examinees scoring at each achievement level
7. Item statistics (item difficulty, item discrimination, option-total correlation)
8. Item response frequency distribution, including numbers and percentages of examinees selecting each option, including omits, multiple responses, and items not reached
9. Item identification numbers (including an item identifier corresponding to the item sequence on the test form), content standards, keys, test year and administration, and any other appropriate identifiers
10. IRT item parameter estimates and fit statistics, if applicable
11. Descriptions of linking and equating procedures (when appropriate)
12. Descriptions of standard-setting procedures (when appropriate)
13. Reliability measures by reporting category for all examinees and by demographic subgroups (subgroups will be designated by the SCDE and SCDEW)
14. Classical reliability indices (e.g., coefficient alpha, stratified coefficient alpha)
15. Classical standard errors of measurement (SEMs) for total scores
16. Conditional SEMs for all obtained scores on the theta and scale-score metrics
17. Decision-consistency indices ( $p$  and  $kappa$ ) at passing/cut scores (e.g., Huynh 1976, 1979, or other procedure acceptable to the SCDE)
18. Inter-rater reliability measures for constructed- and extended-response items, if appropriate
19. DIF results by gender, ethnicity (black/white, at a minimum), test mode (paper-based and online formats, where appropriate) using Mantel-Haenszel or other similar procedure(s)
20. Intercorrelation of results among items by reporting category
21. Conversion tables (raw-score to theta to scale score, with appropriate standard errors)

The draft of the Technical Report is due by August 1 each year. The SCDE will review and may require edits. The final report is to be finalized by December 1 each year.

#### **K. Optional Grade Twelve Testing**



The SCDE may reimburse districts to test a subset of grade twelve students, if funding is available. All procedures would be the same as for testing grade 11 students.

**DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)**

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified: As specified throughout the Scope of Work and/or purchase order.

[03-3030-1]

**DELIVERY DATE -- PURCHASE ORDER (JAN 2006) (revised)**

All items shall be delivered as specified in this document and/or on the purchase order.

**TECHNICAL SUPPORT -- INCLUDED (JAN 2006) (modified)**

Upon request, contractor shall provide technical assistance or service. During testing, such service shall be available immediately (within 10 minutes) following request. During non-testing days, response must be within 24-hours.

*See also Section 6.1 Help Desk, Technical Support, or Customer Service and Information for offerors to submit – evaluation (Jan 2006), (A) Technical Support #18.*

**IV. INFORMATION FOR OFFERORS TO SUBMIT**

**Important Note:**

**Please limit your proposals to no more than 50 pages**

Print size should be 12-point font minimum, on 8½ by 11 paper, **(one page printed on both sides counts as TWO pages)**. All pages, including promotional literature will count towards your page limit. Page numbers should be sequentially numbered. Cover page should be considered page 1.

**INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (JAN 2006)**

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

[04-4005-1]

**A. Technical Proposal**

The Executive Summary should be written in non-technical language to summarize the Offeror's overall capabilities and approaches for providing the products and services outlined in this RFP. Evidence should include, but is not limited to, the Offeror's mission, date of founding, size, and

experience. The executive summary should demonstrate that the Offeror understands the state's goal to have a contractor administer, score, and report a career readiness assessment in an efficient and cost-effective manner.

The Technical Proposal should provide a description of the Offeror's proposal to meet or exceed the requirements of this RFP. The discussion should encompass all of the requirements of the RFP, to include information and measures necessary to meet security and privacy objectives. The response should describe the methodologies, quality management standards, and best practices that will be employed in managing and completing the requirements. The descriptions should be thorough and clear, yet as concise as possible.

The Offeror must include a discussion of each item or question below, following the same order as the major headings below.

#### **1. Test Title and Copyright Date**

- a. The Offeror must provide the complete title of the proposed assessment system including any subtests, if applicable.
- b. The Offeror must provide the original and revision date(s) of the publication for the assessment and the test administration manual(s).

#### **2. Purpose**

The Offeror must describe the purpose(s) for which the assessment was developed and purposes for which assessment scores can validly be used.

#### **3. Test Overview**

- a. The Offeror must describe the development and history of the assessment including who developed the assessment and when it was developed.
- b. The Offeror must describe the career readiness skills and/or aptitudes being measured by the proposed assessment including reading and mathematics measures, technical skills, soft skills, and/or other skills indicative of career readiness.
- c. The Offeror must indicate how the career readiness skills and/or aptitudes measured by the proposed assessment match with the skills and attributes of the South Carolina Profile of the Graduate.
- d. The Offeror must describe the types of items on the test.
- e. The Offeror must provide a test blueprint indicating the number of items per test, and per skill/reporting category.

#### **4. Test Characteristics**

The Offeror must describe the characteristics of the assessment system and address how the assessment:

- a. assesses high school students and adults



- b. provides scores that are reliable and valid indicators of career readiness skills and/or aptitudes
- c. offers meaningful information to employers about career readiness skills and/or aptitudes
- d. provides scores that are suitable for use in hiring decisions; and
- e. If needed, is able to provide supporting evidence that using scores to determine whether or not to hire someone is legal and defensible in a court of law

The Offeror must list which of the readiness skills and attributes listed on the South Carolina Profile of the Graduate posted at <https://ed.sc.gov/scdoe/assets/File/newsroom/Profile-of-the-South-Carolina-Graduate.pdf> are tested and explain how each of those are measured.

- f. World Class Knowledge
- g. Rigorous standards in language arts and math for career and college readiness
- h. Multiple languages, science, technology, engineering, mathematics (STEM), arts and social sciences
- i. World Class Skills
- j. Creativity and innovation
- k. Critical thinking and problem solving
- l. Collaboration and teamwork
- m. Communication, information, media and technology
- n. Knowing how to learn
- o. Life and Career Characteristics
- p. Integrity
- q. Self-direction
- r. Global perspective
- s. Perseverance
- t. Work ethic
- u. Interpersonal skills

#### **5. Assessment Materials (these materials do not count in the 50 page limit)**

The Offeror should submit samples of test materials for review that assist in the understanding of the proposed assessment. These materials could include:

- a. Sample or released test forms and/or items
- b. Answer documents
- c. Test administration guidelines and/or manuals, brochures, etc.
- d. Training papers for handscoring
- e. Sample score reports

#### **6. Customized Materials and Accommodations**

- a. The Offeror must provide a description of the customized test materials, special supplementary materials, and accommodations available for Students with Disabilities (SWDs) and English Language Learners (ELLs) for both paper and online testing formats.

- b. Provide evidence the test is appropriate for SWDs and ELLs.

## 7. Online Testing

- a. Describe the online system that will be used for administering the assessment
- b. Describe the reporting system, including how examinees receive reports
- c. If available, provide online access to the assessment, a sample assessment, or other online information about the system. In the discussion of the online system, include the following elements that are applicable:
  - i. The Offeror must indicate whether the online system is Web-based or computer-based and the advantages of the one that is proposed.
  - ii. The Offeror must provide the minimum requirements for computer hardware/software, all supported operating systems, and all supported acceptable devices (e.g., desktop, laptop, tablet, mobile device, etc.).
  - iii. The Offeror must describe system capacity, i.e., the number of simultaneous testers that can be supported without interruptions or degradations in speed, service, functionality, or features.
  - iv. The Offeror must describe the technical specifications of the online system relating to processing speed, transfer rate, and bandwidth.
  - v. The Offeror must describe capability to utilize state data files to import examinee demographic data into the contractor's testing system before testing (e.g., SC precode system, the State ID system, and/or the PowerSchool ID system).
  - vi. The Offeror must describe minimum LAN server requirements and minimum bandwidth issues and requirements by school, district, testing site, state, etc.
  - vii. The Offeror must describe the standard software toolset (tools supplied by the online assessment system which are provided to the end users of the system) and any extended software toolsets associated with online testing.
  - viii. The Offeror must describe the user/presentation interface.
  - ix. The Offeror must provide the plan for the availability of technical support during the administration of tests (including night and/or weekend hours).
  - x. The Offeror must submit your uptime guarantee and describe what happens if it is not met.
  - xi. The Offeror must describe how security issues are handled including but not limited to encryption, items resident in memory, locking out other software during testing, server issues, firewall issues, and disabling print screen capability.
  - xii. The Offeror must describe how the online system prevents screen captures, viewing HTML source, and saving to HTML source during the administration of the assessment.
  - xiii. The Offeror must describe how the online system prevents access to the internet (outside the access deliberately provided by the test delivery application) during the administration of the assessment.
  - xiv. If cloud computing is used, the Offeror must explain if any component of the cloud structure may also be used by other clients during testing.



- xv. If cloud computing is used, the Offeror must describe any system redundancy or system back-ups in place to sustain full functionality, speed, service, and features of the CBAS in the event a regular component of the system should fail or encounter problems.
- xvi. The Offeror must provide a description of the Offeror's prior experience delivering the proposed assessment on the proposed online system. Cite any cases of successful and unsuccessful delivery of the proposed assessment on the proposed system in other large scale administrations during the past three years, as well as any cases of successful and unsuccessful delivery of other assessments on the proposed system in the last three years. Unsuccessful delivery would include technical problems, system outages, system lags, examinees being kicked out, items not displaying correctly, capacity problems, and lost scores. Indicate cases in which the validity of the results may have been compromised by these technical problems, and if and how long scoring or score reporting was delayed. Describe how the issues were resolved.

## **8. Test Administration**

- a. Provide a complete list and description of all test administration manuals, instructions, reference materials, support videos, and other training materials necessary to administer the assessment.
- b. Provide available test dates and a statement of guarantee that the data files for grade 11 testing will be delivered to the SCDE and districts by June 15 each year.
- c. Provide an overview the test administration policies such as allowed testing locations (e.g., schools, and/or other sites); breaks during testing; use of calculators; testing environment; dealing with power failures, bomb threats, etc.; student cheating; and student illness.
- d. Provide an overview of both paper and online testing procedures including a description of the procedures to be used for test administration. The description should include permissible variations (e.g., in scheduling, timing, setting, breaks) from standard testing procedures. Also indicate any special procedures, equipment, or manipulatives required for a valid administration of the assessment.
- e. Indicate if the test is timed. If timed, specify the amount of time allowed and/or recommended for testing for each component of the assessment proposed and provide a rationale regarding how timed tests supports the test construct and how the timing was established. If the test is not timed, specify the typical test administration time.
- f. Districts will notify the Contractor whether students will be tested online or through paper. The Contractor must explain how districts will pre-identify each examinee's testing mode (i.e., online or paper-based testing).
- g. The Offeror must describe capability to utilize state data files to import examinee demographic data into the contractor's testing system before testing for paper-based testing (e.g., SC precode system, the State ID system, and/or the PowerSchool ID system).

## **9. Training**

- a. Describe the training that will be provided prior to test administration and the targeted audience (e.g., staff at testing sites, DTCs, Technology Coordinators, and STCs).

- b. Describe how the training will be conducted (e.g., face-to-face, webinars, blended formats, etc.).
- c. Describe any training or practice required of examinees to have a valid administration of the assessment, as well as any practice or preparation resources that will be provided to students and adult examinees that may improve their performance.

#### **10. Scoring**

Describe how the tests are scored and by whom (e.g., the teacher, the contractor). Discuss any handscoring requirements and procedures including how scorers are trained and qualified.

#### **11. Test Results/Reports**

- a. Describe all examinee-level reports (e.g., individual score reports, certificates, credentials, wallet-sized reports) and summary reports available to examinees and/or parents, employers, schools, districts, testing sites, the SCDE, the SCDEW and other UGUs
- b. The Offeror must provide the date(s) when each of the various test reports will be available online and in paper format. If multiple test dates are allowed, provide the reporting dates that correspond to each test date.
- c. Describe the scores that are reported for the total test and subtests (domains or standards) indicating the method or process used to calculate the scores.
- d. Provide a description of any achievement levels, achievement descriptors, and cut scores developed for the proposed assessment program. Explain how each was developed or determined.

#### **12. Interpretation and Use of Test Scores**

- a. Describe any supplemental products and services (e.g., an interpretive guide to score reports, tutorials, and/or professional development training) that are available to assist with the interpretation of test results.
- b. Explain any other types of feedback available for examinees, students, parents, and teachers and the way(s) in which the proposed assessment can be used to inform instruction.

#### **13. Research Studies**

- a. Describe any available evidence that supports the use of the assessment with both high school students and adults.
- b. Describe any evidence that the test scores provide valid indicators of career readiness skills and/or aptitudes.
- c. Provide any evidence that the results of the assessment provide useful information to business and industry.
- d. Provide any evidence of how effective the proposed assessment is in determining career readiness (e.g., predictive validity, concurrent validity, case studies, or other measures).

#### **14. Reliability, Validity, Quality, and Data Integrity**



- a. The Offeror must describe the procedures used to calculate the reliability of the assessment and subtests. Report the reliability coefficient(s) calculated for each total test and for each subtest level reported, identifying each type of reliability coefficient (e.g., stability, equivalence, or internal consistency).
- b. Report the reliability coefficients for examinee subgroups (e.g., race, ethnicity, gender, SWD, ELL).
- c. Provide evidence that the competencies measured by the assessment are predictive of later success.
- d. Transparency to SCDEW and SCDE
  - i. The Offeror must state whether the contractor will agree to provide all testing materials, including all test items (online or on paper) to the state for review
  - ii. The Offeror must state whether the contractor will agree to provide any and all information pertaining to the quality, validity, reliability of the test, test scores, score reports, and associated data (e.g., summary data files) to the SCDE, SCDEW and other UGUs.
  - iii. The Offeror must state whether the contractor will agree, in the event a problem occurs, to disclose all issues to the SCDE, SCDEW and other UGUs in a timely, complete, transparent, and forthright manner.
  - iv. The Offeror must state whether the contractor will agree to provide a complete and transparent accounting of all problems to the SCDE, SCDEW and other UGUs.
  - v. The Offeror must state whether the contractor will agree to provide to the SCDE, SCDEW and other UGUs any and all reports of problems, anomalies, or deviations from standardized testing procedures, (formal or informal, written or verbal), provided by districts, schools, testing sites, examinees, or parents.
  - vi. The Offeror must state whether the contractor will a) be capable of and b) agree to flagging student and/or adult examinee records in the summary data file where student/adult examinees may have encountered certain types of problems (such as misprinted test materials, faulty testing instructions, or technical problems in online testing) if requested by SCDE, SCDEW or other UGUs.
  - vii. The Offeror must specify any restrictions, limitations, or exceptions to the above terms (e.g., due to contractor policies, procedures, including any issues such as intellectual property, confidentiality, proprietary information, or any other contractor, policies, rules, practices, etc.).

#### 15. Scaling

- a. Describe the procedure used to scale test items (e.g., latent trait or classical approach) for the assessment and each subtest.
- b. The Offeror must report the mean p-values (i.e., difficulties) each test and each subtest.

#### 16. Test Bias

- a. Describe the procedures and/or statistical tests performed to evaluate items for cultural and sensitivity bias, including for gender and ethnicity bias.

- b. Provide an overview of the results of these procedures. If a review panel was convened, describe the participants and the instructions given to them.

#### **17. Test Security**

- a. The Offeror must describe the test security procedures that will be implemented to ensure the confidentiality and security of test materials during online and paper production (including any work at outside vendors), distribution, administration, and return and storage of secure test materials.
- b. The Offeror must discuss the test security procedures that will be in place to ensure administration and scoring fidelity and authenticity of examinee responses.
- c. The Offeror must propose delivery, return, and follow-up procedures necessary to ensure that 100 percent of secure paper test materials issued are accounted for at the time of test materials return.

#### **18. Help Desk, Technical support and Customer Service**

- a. The Offeror must describe the help desk, technical support, and customer service available to districts, schools, testing sites, or examinees. In the discussion: 1) specify the hours and days of availability; and 2) specify the number of help desk staff.
- b. The Offeror must describe how the help desk will handle problems which may occur before, during, and after testing. Examples may include problems such as misprinted test booklets, poorly functioning test items, errors in information provided by the contractor, technical problems during online testing, shipping problems during critical times.
- c. See also Section III "Technical Support -- Included (jan 2006) (modified)"

#### **19. Consistency and Stability**

The Offeror must include a discussion of anticipated changes to the proposed assessment during the term of this contract, (e.g., tests being added or eliminated, changes in constructs measured, changes in scoring, changes in year-to-year score comparability, and/or any changes in the meaning and interpretation of scores).

#### **20. Testing Problems**

- a. The Offeror must describe provisions or plans for dealing with technical difficulties or emergencies that might arise before, during, and after testing, including options for retesting, rescoring, cancelling scores, back-up test forms, and procedures for ensuring the integrity and validity of the scores in the event that any technical issues may have impacts on the results.
- b. The Offeror must describe any availability of emergency testing forms.

#### **21. Reimbursement**



The Offeror must describe any recommendations that would assist the SCDE in reimbursing the districts (e.g., vouchers). For grade 11 testing, as mandated in Act 94, districts will pay the contractor for testing costs and the SCDE will reimburse districts based on the number of test scores on the data file.

## **B. Qualifications**

### **1. Corporate Qualifications**

- a. The Offeror must describe its ability to provide the products and services required by this RFP.
- b. The Offeror must clearly address its understanding of the roles of the Contractor, SCDE, SCDEW, districts, schools and other UGUs.
- c. The Offeror must describe its qualifications, background, and prior experience performing tasks similar to those required in this RFP.
- d. The Offeror must document contracted services provided for assessment projects similar to the ones described in this RFP that demonstrate its corporate capability to complete the tasks of this RFP. For each instance, the documentation should include a description of the services and products delivered; contract reference numbers; the contract period; and the name, address, telephone number, and e-mail address of a contact person for the contracting agencies.
- e. The Offeror must provide a description of the Offeror's prior experience delivering any assessment on the proposed online system. Cite any cases of successful and unsuccessful delivery of the proposed assessment on the proposed system in other large scale administrations during the past three years, as well as any cases of successful and unsuccessful delivery of other assessments on the proposed system in the last three years. Unsuccessful delivery would include technical problems, system outages and/or lags, examinees being kicked out of the online system, items not displaying correctly, capacity problems, and lost scores. Indicate cases in which the validity of the results may have been compromised by these technical problems, and if and how long scoring or score reporting was delayed. Describe how the issues were resolved.
- f. The Offeror must list any assessment contracts that have been terminated or ended before the original contract period was over and explain the reasons associated with the termination.
- g. If subcontractors will be used for any portion of the work, the Offeror must name the subcontractor(s) and document the experience and qualifications of the subcontractor(s) in performing tasks similar to those tasks they will perform.

### **2. Staffing Qualifications**

- a. The Offeror must submit a staffing plan that clearly delineates the management structure for this project.
- b. The Offeror must submit the hours that key personnel will be committed to the South Carolina project.
- c. The Offeror must provide the name; address; and resume, including qualifications and experience with large scale projects, of the key personnel, including all staff who will be

assigned to work with SCDEW, SCDE, the District Test Coordinators, UGUs and staff who will conduct training.

- d. The Offeror must clearly state how project management staff will communicate with SCDEW, SCDE and other UGUs.

### **C. Price Proposal**

The Offeror must provide a per student price in an Excel worksheet (has been provided) with the prices broken out by fiscal year.

### **INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015) (revised)**

You shall submit a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

### **SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)**

[ASK QUESTIONS NOW: If you have a properly qualified third-party report or certification you believe we should accept in lieu of those identified in item (b), submit a question identifying same pursuant to the clause titled Questions from Offerors.]

The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire, (appendix A), ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-1]

In addition to the clause above:

### **State of South Carolina Enterprise Privacy Office (EPO) and Division of Information Security (DIS)**

All aspects of information handling and information systems must adhere to the State of South Carolina Enterprise Privacy Office (EPO) and Division of Information Security (DIS) policies located on the SC Division of Information Security web site (<http://dis.sc.gov/>). **Contractor shall submit a**



statement of compliance as part of the bid process, which should include an independent attestation of compliance. Contractor must conduct annual reviews of EPO and DIS policies for updates and submit a statement of compliance or plan of action and milestones to reach compliance for new requirements.

#### **MINORITY PARTICIPATION (DEC 2015)**

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☐ No

Is the bidder a Minority Business certified by another governmental entity? ☐ Yes ☐ No

If so, please list the certifying governmental entity: \_\_\_\_\_

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? \_\_\_\_\_

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female
- ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority)
- ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL: <http://osmba.sc.gov/directory.html>  
[04-4015-3]

## **SUBMITTING REDACTED OFFERS (MAR 2015) (modified)**

If your offer includes any information that you marked as "Confidential," "Trade Secret," or "Protected" in accordance with the clause entitled "Submitting Confidential Information," you must also submit one complete copy of your offer from which you have removed or concealed such information ( the redacted copy). The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted. Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password. [04-4030-2]

**Submit a redacted copy WITH your offer**

## **V. QUALIFICATIONS**

### **QUALIFICATIONS OF OFFEROR (MAR 2015) (modified)**

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly (**within a 24-hour maximum**) furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on [procurement.sc.gov](http://procurement.sc.gov), link to "Standard Clauses & Provisions." [05-5005-2]

### **QUALIFICATIONS -- REQUIRED INFORMATION (MAR 2015) (modified)**

Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor - Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope (b) three most recent, comparable contracts (including contact information – company name, contact person, contact's email and direct phone number) which have been performed. (c) List of failed projects, suspensions, debarments, and significant litigation (**if there aren't any, include a statement that makes it clear that there aren't any**).

### **SUBCONTRACTOR -- IDENTIFICATION (FEB 2015)**

If you intend to subcontract, at any tier level, with another business for any portion of the work and



that portion either (1) exceeds 10% of your cost, (2) involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, **and point of contact**. In determining your responsibility, the state may contact and evaluate your proposed subcontractors. [05-5030-2]

**If subcontractors will be used for any portion of the work they should be listed on the form provided as Appendix B. Completed form should be submitted as part as your solicitation response document.**

Subcontractor as defined by the state is found in Section II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS; DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015) SA

## **VI. AWARD CRITERIA**

### **AWARD CRITERIA -- PROPOSALS (JAN 2006)**

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

### **AWARD TO ONE OFFEROR (JAN 2006)**

Award will be made to one Offeror. [06-6040-1]

A panel will use weighed scoring to evaluate the offers. The maximum amount of points has been established for each category on the evaluation criteria outlined in this solicitation document (**EVALUATION FACTORS -- PROPOSALS (JAN 2006, 06-6065-1)**). The highest ranked Offeror who is found to be responsive and responsible will be awarded the contract.

### **COMPETITION FROM PUBLIC ENTITIES (JAN 2006)**

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

### **DISCUSSIONS AND NEGOTIATIONS - OPTIONAL (FEB 2015)**

Submit your best terms from both a price and a technical standpoint. **Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice.** Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your

unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

#### **EVALUATION FACTORS -- PROPOSALS (JAN 2006)**

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous. [06-6065-1]

	Item	Total
1.	<b>Technical Proposal (A)</b> – The degree of completeness and the suitability of the Offeror's responses for all required items.	1–45 Points
2.	<b>Qualifications (B)</b> – The Offeror's corporate experience and evidence of successful past performance with projects of similar size and scope. The qualifications of the proposed staff.	1-30 Points
3.	<b>Price/Business Proposal (C)</b> – See Section VIII.	1–25 Points
	<b>Total Potential</b>	<b>100 Points</b>



## **VII. TERMS AND CONDITIONS -- A. GENERAL**

### **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)**

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law. [07-7A004-2]

### **BANKRUPTCY - GENERAL (FEB 2015)**

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

### **CHOICE-OF-LAW (JAN 2006)**

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

### **CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (FEB 2015)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as

amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

#### **DISCOUNT FOR PROMPT PAYMENT (JAN 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

[07-7A020-1]

#### **DISPUTES (JAN 2006)**

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be



served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

#### **EQUAL OPPORTUNITY (JAN 2006)**

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

#### **FALSE CLAIMS (JAN 2006)**

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

#### **FIXED PRICING REQUIRED (JAN 2006)**

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

#### **NO INDEMNITY OR DEFENSE (FEB 2015)**

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

#### **NOTICE (JAN 2006)**

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

#### **OPEN TRADE (JUN 2015)**

During the contract term, including any renewals or extensions, Contractor will not engage in the

boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

#### **PAYMENT and INTEREST (FEB 2015)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

#### **PUBLICITY (JAN 2006)**

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

#### **PURCHASE ORDERS (JAN 2006)**

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

#### **IRAN DIVESTMENT ACT - ONGOING OBLIGATIONS (JAN 2015)**



(a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]

#### **SURVIVAL OF OBLIGATIONS (JAN 2006)**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

#### **TAXES (JAN 2006)**

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

#### **TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)**

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

#### **THIRD PARTY BENEFICIARY (JAN 2006)**

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

#### **WAIVER (JAN 2006)**

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

**UNIT PRICE GOVERNS (JAN 2006):**

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

**VII. TERMS AND CONDITIONS -- B. SPECIAL**

**BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)**

(a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]

**CHANGES (JAN 2006) (modified)**

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished



under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

In addition to the clause above:

In the event that the testing program is eliminated in whole or in part during any period of this contract, the contract will remain in effect to provide testing and scoring services for those test(s) still given. If tests in any academic area are eliminated and subsequently resumed during the life of this contract, the Contractor shall be obligated to provide services for the tests as if they were never eliminated, at the price stipulated in the proposal

Except where specified in this RFP, all requested deliverables constitute services to be rendered and products to be delivered on an annual basis by the Contractor. In the event that the testing program is in any way altered, modified, or restricted by action of the South Carolina General Assembly, the State Board of Education, the State Superintendent of Education, or the South Carolina Education Oversight Committee (EOC), SCDE reserves the right to modify this contract to conform to those changes. Since this testing program serves to meet the federal requirements for high school assessment, the SCDE reserves the right to modify this contract to conform to changes in any federal laws or regulations. Any changes and/or modifications would come by way of a change order document issued by the SC State Procurement Office.

#### **CHANGES (JAN 2006)**

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;



(c) place of delivery;  
(d) description of services to be performed;  
(e) time of performance (i.e., hours of the day, days of the week, etc.); or,  
(f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

[07-7B025-1]

#### **COMPLIANCE WITH LAWS (JAN 2006)**

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

#### **CONFERENCE -- PRE-PERFORMANCE (JAN 2006) (modified to remove "within 5 days")**

Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

#### **CONTRACT DOCUMENTS & ORDER OF PRECEDENCE--SOFTWARE LICENSING--SINGLE AGENCY (FEB 2015):**

Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements--Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software -- Single Agency*, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract. [07-7B042-1]



## **CONTRACT LIMITATIONS (JAN 2006)**

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]

## **CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)**

**Note:** Certificate of Insurance **MUST** be submitted to the procurement manager no later than 10 days after contract goes final.

As this is a multi-party agreement, the liability rests with the party that has breached.

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any

of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

[07-7B056-2]

Note: The named insured should be as follows: State of South Carolina, including all public procurement units

#### **CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)**

**Note: Certificate of Insurance MUST be submitted to the procurement manager no later than 10 days after contract goes final.**

**As this is a multi-party agreement, the liability rests with the party that has breached.**

[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. **Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.**]

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work



and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims - Disclosure Of Information" and "Information Use And Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]

Note: The named insured should be as follows: State of South Carolina, including all public procurement units

#### **CONTRACTOR PERSONNEL (JAN 2006)**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]



## **CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)**

The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

## **CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)**

Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work. [07-7B067-1]

## **DEFAULT (JAN 2006)**

(a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5)

epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

[07-7B075-1]

#### **ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES (JAN 2006)**

The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

#### **ESTIMATED QUANTITY - UNKNOWN (JAN 2006)**



The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

#### **ILLEGAL IMMIGRATION (NOV 2008)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

#### **INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011)**

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnatee, and whether or not such claims are made by a third party or an Indemnatee; however, if an Indemnatee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnatee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

#### **INDEMNIFICATION - INTELLECTUAL PROPERTY (JAN 2006):**







notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

#### **INFORMATION SECURITY - DEFINITIONS (FEB 2015)**

The following definitions are used in those clauses that cross reference this clause.

**Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

**Data** means a subset of information in an electronic format that allows it to be retrieved or transmitted.

**Government information** means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

**Information** means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

**Information system** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

**Public information** means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

**Software** means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.

**Third party** means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

**Unrestricted information** means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

**Web-based service** means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]

#### **INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)**

Notwithstanding any other provisions, **contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States.** For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]

#### **INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015) (modified)**

**(a) Definitions.** The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.



Intrusion means an unauthorized act of bypassing the security mechanisms of a system.

Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

Safeguarding means measures or controls that are prescribed to protect information.

Voice means all oral information regardless of transmission protocol.

**(b) Safeguarding Information.** Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

**(c) Safeguarding requirements and procedures.** Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites: Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one

physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800-88, Guidelines for Media Sanitization, at [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_with-errata.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf).

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

**(d) Subcontracts.** Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

**(e) Other contractual requirements regarding the safeguarding of information.** This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

In addition to the above clause:

#### **Electronic Transmission**

The SCDE has implemented policies and procedures for an electronic transmission system. For the purposes of transmitting secure student demographic information and test data electronically, the Contractor and the SCDE will utilize the Contractor's secure FTP site. The Contractor must abide by all electronic submission requirements specified by SCDE.

#### **Secure Web Sites**

In addition, the Contractor must establish one or more secure Web sites for districts, and schools, and students to receive secure tests, documents, and data files.

The Web site for district and school use must provide DTCs with the ability to perform a variety of test administration tasks including downloading documents such as test data files, score reports and other necessary test materials. Other activities that could be accomplished through this Web site include



- printing student test tickets and testing rosters;
- viewing the testing status of individual students including questions attempted versus total questions;
- entering new students and test sessions;
- reviewing and editing student data, teacher data, and test sessions;
- searching, viewing and downloading results of student, teacher, and test session data;
- verifying enrollment numbers; and
- collecting district and school testing schedules.

This Web interface would also be used for any technical online tasks that district staff would perform such as configuring computers or other devices for testing.

The Contractor must provide a detailed user's guide for this administrative Web site interface.

#### **INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)**

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]

#### **INFORMATION USE AND DISCLOSURE (FEB 2015) (modified)**

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

**(a) Definitions.** The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

**(b) Legal mandates.** Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

**(c) Flow down.** Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

**(d) Collecting Information.** Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

**(e) Rights, Disclosure and Use.** Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

**(f) Return.** Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

**(g) Privacy Policy & Applicable Laws.** Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

**(h) Actions Following Disclosure.** Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor



shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) Survival & Remedy. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

In addition to the clause above:

**"Confidential Information"** will mean all data, which will be unmarked, and other proprietary information which is specifically marked as proprietary or confidential and which is disclosed in any form in connection with this Agreement.

During the term of this Agreement and indefinitely after the date of termination of this Agreement, the Contractor:

- will treat as confidential all confidential information provided by the UGUs
- will not use such confidential information except as expressly permitted under the terms of this agreement or otherwise previously authorized in writing by the UGU
- will implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of such confidential information;
- will not disclose such confidential information to any third Party; and
- will treat all student records as confidential information in compliance with The Family Educational Rights and Privacy Act (FERPA). Without limiting the foregoing, Contractor shall use at least the same procedures and degree of care to prevent the disclosure of confidential information as it uses to prevent the disclosure of its own confidential information of like importance, and shall in any event use no less than reasonable procedures and a reasonable degree of care.

All aspects of information handling and information systems must adhere to the State of South Carolina Enterprise Privacy Office (EPO) and Division of Information Security (DIS) policies located on the SC Division of Information Security Web site (<http://dis.sc.gov/>). Contractor shall submit a statement of compliance as part of the bid process, which should include an independent attestation of compliance. Contractor must conduct annual reviews of EPO and DIS policies for updates and

submit a statement of compliance or plan of action and milestones to reach compliance for new requirements.

### **FERPA Compliance**

The Contractor agrees that it may create, receive from or on behalf of the SCDE, or have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). Contractor represents, warrants, and agrees that it will:

- hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by the SCDE in writing;
- safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information;
- continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement;
- not read the contents of any such files it receives with FERPA Records in its Service, except as necessary to process the transaction through the system or store the data as part of Service;
- use FERPA Records only for the purposes for which they were intended;
- provide a copy, at its request, in a mutually agreeable format, then destroy all FERPA Records when the Agreement expires or terminates within sixty (60) days of such expiration or termination;
- provide the UGU, at its request, with a written summary of the procedures Contractor uses to safeguard the FERPA Records; and
- provide an accounting of all unauthorized disclosures of FERPA-protected records at the request of the UGU.

All individual student information (e.g., demographic data and test scores) provided to the contractor by SCDEW, SCDE, districts, schools, students, and other UGUs or collected by the contractor must be considered an educational record and protected by The Family Educational Rights and Privacy Act (FERPA).

### **Exceptions**

The recipient of Confidential Information shall be under no obligation with respect to any information: (a) which is, at the time of disclosure, available to the general public; or (b) which becomes at a later date available to the general public through no fault of the recipient and then only after said later date; or (c) which the UGU can demonstrate by written record was in its possession before receipt; or (d) which is disclosed to the UGU without restriction on disclosure by a third party who has the lawful right to disclose such information.



### **Administrative Notice**

In the event that the Contractor is required by judicial or administrative process to disclose any information or materials required to be held confidential hereunder, the Contractor will promptly notify the UGU and allow a reasonable time to oppose such process before making disclosure. Any other notice or communication pursuant to this Agreement will be in writing and sent by certified/registered mail or overnight courier.

### **Injunctive Relief**

Parties understand and agree that any use or dissemination of information in violation of this Agreement may cause the UGU irreparable harm, may leave the UGU with no adequate remedy at law, and shall entitle the UGU to seek injunctive relief.

### **INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)**

To the extent applicable:

- (a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.
- (b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.
- (c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.
- (d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.
- (e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act. [07-7B110-1]

### **LICENSES AND PERMITS (JAN 2006)**

During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

### **OFFSHORE CONTRACTING PROHIBITED (Modified)**

No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications

that, in whole or in part, take place offshore of the United States. Note: This is non-negotiable. No offshore contracting for services performed under this contract will be allowed.

#### **OWNERSHIP OF DATA and MATERIALS (JAN 2006) (modified)**

All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. **This includes, but is not limited to test items and data, test forms, test score data (including all individual and summary results), and all documents and data associated with the standard setting process.**

#### **PRICE ADJUSTMENTS (JAN 2006)**

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

[07-7B160-1]

#### **PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006)**

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase. [07-7B165-1]



#### **PRICE ADJUSTMENTS -- LIMITED BY CPI "OTHER GOODS and SERVICES" (JAN 2006)**

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods & Services" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov) [07-7B175-1]

#### **PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)**

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

#### **RELATIONSHIP OF THE PARTIES (JAN 2006)**

Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

#### **RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006)**

Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]

#### **RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction. [07-7B212-1]

#### **SOFTWARE LICENSES (JAN 2006):**

**Proprietary Software:** Proprietary software is non-custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.

**License:** The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder.

**Title:** Title to any proprietary software provided by the Contractor to the State will remain with the Contractor.

**Trade Secrets:** The State agrees that the proprietary software is a trade secret of the contractor. The State agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the State for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the State without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.

**Source Code:** Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine-readable form to facilitate compiling and linking the code.



In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State.

Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products.

Customized Software: Customized software is made-for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain and use the software.

Title: Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software.

Software Tools: The contractor shall provide to the State, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the State would require to maintain or enhance the customized software. The price for said tools and the cost to train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost proposal submitted to the State in response to the State's solicitation.

Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State. For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media.

Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

The source code may be accessed only upon the following conditions:

- a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or
- b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the State may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns. [07-7B215-1]

#### **SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)**

The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information



systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]

#### **SHIPPING / RISK OF LOSS (JAN 2006):**

F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other location, as specified herein. (See Delivery clause) [07-7B220-1]

#### **SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)**

(a) Definitions. As used in this paragraph, these terms are defined as follows: "Software" means any computer program identified by the solicitation. "Licensor" means an entity that owns the intellectual property rights for an item of Software or has the authority to license or sublicense the Software directly to the state. "Software licensing agreement" means any agreement, regardless of how designated, pertaining to the intellectual property rights for or the right to use any Software, including, but not limited to, any such agreement proposed prior to or after award, including without limitation any such agreement that either is affixed to (e.g., shrink-wrap), imbedded in (e.g., click-wrap), or in any way accompanies the Software upon delivery.

(b) Separate Agreement for License and Services. This contract will address all Work (excluding the right to use the Software) and all terms regarding pricing, payment, and delivery of all Software. An independent Software Licensing Agreement may be formed between the state and each applicable Licensor for all Software identified herein. Pursuant to this contract, the state intends to pay contractor in order to acquire license rights from Licensor under terms governed by the applicable Software Licensing Agreement. **ACCORDINGLY, YOU MUST NOT SUBMIT ANY SOFTWARE LICENSING AGREEMENTS WITH YOUR OFFER.**

(c) Political Subdivisions. You agree not to fulfill an order or provide any software to a local public procurement unit (see "Statewide Term Contract" provision) unless and until you have first presented to the unit a copy of the "Enrollment Agreement for South Carolina Public Entities" (Exhibit A of the COTS Piggyback), for execution, and if signed, delivered a copy to the applicable Licensor. For each Licensor, a unique version of the Enrollment Agreement for South Carolina Public Entities form is attached. This requirement does not apply to software licensed by a Licensor not identified on the list attached and entitled Enrollment Agreement Applicability List. [07-07B223-2]

#### **SOFTWARE LICENSING AGREEMENTS--SINGLE SOLICITATION (FEB 2015)**

(a) Definitions. As used in this clause, these terms are defined as follows:

"Commercial Off-The-Shelf (COTS) Software" means software used with no customization and for which source code is not made available to licensees.



"Configuration" means any customer-specific modification to software that does not require changes to the software's source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.

"Customization" means any customer-specific modification to software that requires changes to the software's source code.

"Firmware" means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine's manufacturer or seller.

"Licensor" means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.

"Piggyback" means the document attached to this solicitation and entitled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency* (see appendix C) , which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor's standard software licensing agreement may need to be negotiated.]

"Software" means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.

"Software licensing agreement" means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).

"Software maintenance" means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.

"Software product" means any COTS which you propose to provide pursuant to the contract.

"Source code" means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.

(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled "Bid / Proposal As Offer To Contract," a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State's acceptance of your offer does not serve as the State's acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions," will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.

(c) **Critical Instructions.** (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to



license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation (appendix D) to assist you in providing this information.

**(2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer.** You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.

(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.] [07-7B224-1]

#### **STATEWIDE TERM CONTRACT (DEC 2015)**

(a) With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts.

(b) The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer.

(c) As used herein, "additional contract terms" means additional terms not otherwise allowed by the "Purchase Orders" clause. Notwithstanding the "Purchase Orders" clause, a purchase order may include additional contract terms but only if and to the extent necessary (i) to comply with a requirement directly related to the work and imposed on the Using Governmental Unit either by law or as a condition of using state or federal assistance, grant, or contract funds, or (ii) for the Using Governmental Unit to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the Using Governmental Unit's data. Contractor may decline to honor a purchase order including additional contract terms.



(d) If the contractor is suspended or debarred pursuant to Section 11-35-4220, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions: (1) order the contractor to not accept any further orders under the contract until the suspension or debarment has been lifted; (2) terminate this contract; (3) order the contractor to not accept any further orders under any other statewide term contract; or (4) terminate the contractor's award of any other statewide term contract. [07-7B225-3]

#### **STATEWIDE TERM CONTRACT - ACCEPTANCE OF OFFERS 10% BELOW PRICE (NOV 2012)**

Pursuant to Section 11-35-310(35), the state may purchase items available on this contract from a third party (an "alternate vendor") if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor's price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the attached form. [07-7B227-1]

Note: Also see Appendix E

#### **STATEWIDE TERM CONTRACT - SCOPE (JAN 2006)**

The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-1]

#### **ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING (JUN 2015)**

(a) Procurement Services (PS) establishes and maintains master State contracts for the benefit of all South Carolina state and local public entities. These contracts allow all public entities both to maximize the State's purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. Procurement Services' cost for this central purchasing activity is offset by an administrative fee which each contractor includes in its contract pricing (though not separately itemized or invoiced) and is paid to the vendor by each participating public entity. The contractor collects the fee as a fiduciary for the State and remits the same as calculated in accordance with the clause titled "ADMINISTRATIVE SERVICES FEE - CALCULATION." The price stated in the contractor's bid or proposal must include all amounts necessary for contractor to meet this obligation.

(b) As used in this clause, the term "reporting period" means each full calendar quarter (Jan. - Mar., Apr. - Jun., Jul. - Sep., and Oct. - Dec.) and any remaining periods less than a full calendar quarter during the term of this contract. For each reporting period, contractor shall report to PS its total sales pursuant to this contract for the period and shall remit the fee to the PS Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April

30). If the amount due for a reporting period is less than \$10.00, no payment is required. The procurement officer will provide contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. You may contact the Reports Manager at:

Procurement Services Division  
Attn: Reports Manager  
1201 Main Street, Suite 600  
Columbia, SC 29201

Phone: (803) 737-0600 (ask to speak to the Reports Manager)

***Failure to receive the information packet does not relieve contractor from its obligations hereunder.***

(c) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: contractor's name, contract number, contract description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number of units (if practicable), and the number, date, and amount of contractor's check to PS. Unless otherwise specified by the reports manager, the usage report shall be submitted electronically according to instructions in the information packet. If the reports manager requires the contractor to provide a more detailed usage report, the reports manager will work directly with the contractor to determine the appropriate content and format of the report.

(d) During the term of this contract and for a period of three years thereafter, PS or its authorized representatives shall be afforded access at reasonable times to contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this contract. If the audit indicates that contractor has materially underpaid PS, then contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (e)) and reimburse PS for all costs of the audit.

(e) Payments of the fee which are due and unpaid by the contractor (including amounts disclosed by audit) shall accrue interest as provided in the Payment and Interest clause for amounts due to the State. In addition to the fee and interest, contractor agrees to pay to PS its reasonable expenses of collection, including costs and attorneys' fees (and fees for inside counsel), whether or not PS commences legal action.

(f) If the contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

(1) direct the contractor to not accept any further orders under the contract until PS determines that the cause for such direction has been eliminated;



(2) terminate this contract;

(3) direct the contractor to not accept any further orders under any other master State contract established by PS until PS determines that the cause for such direction has been eliminated.

(g) For purposes of this clause, PS is intended as a third-party beneficiary of this contract. [03-3090-3]

#### **ADMINISTRATIVE SERVICES FEE - CALCULATION - SPO (modified)**

For each reporting period, Contractor shall pay to PS a fee equal to **one percent (1%)** of the total dollar amount (excluding sales taxes and adjusted for credits or refunds) of purchases made by any public procurement unit from Contractor pursuant to this contract.

#### **TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

#### **TERM OF CONTRACT -- OPTION TO RENEW (JAN 2015)**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year, unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]

#### **TERM OF CONTRACT -- TERMINATION BY CONTRACTOR (JAN 2006)**

Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least 120 days prior to the expiration of the then current term. [07-7B250-1]

#### **TERMINATION FOR CONVENIENCE (JAN 2006)**

(1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the

extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the State's right to require the termination of a subcontract, or (ii) increase the obligation of the State beyond what it would have been if the subcontract had contained an appropriate clause.



[07-7B265-1]

## VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

### PRICE PROPOSAL (JAN 2006)

Notwithstanding any other instructions herein, you shall submit pricing information as a separate document in your proposal packet **ON THE EXCEL SHEET PROVIDED.** Excel sheet has been provided as a separate attachment to this solicitation document.

Per student rates must be all-inclusive based on the scope of work specified in this solicitation document.

The number of students provided is for evaluation purposes only. The quantities are only estimates and may not reflect actual yearly usage.

For costing and planning purposes, the contractor can assume the following:

Approximately 70,000 tests will be administered annually. Twenty-five percent (25%) of the test assume will be online and 75% of the test assume will be administered on paper. **The % of paper and online assessments are for costing purposes only and may change after award.**

## IX. ATTACHMENTS TO SOLICITATION

### ATTACHMENTS LIST [09-9002-1]

The following documents are attached to this solicitation and must be included in your proposal response:

- Appendix A – Service Provider Security Assessment Questionnaire
- Appendix B - Subcontractor Form
- Appendix C - South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency (Piggyback)
- Appendix D – Software Table
- Appendix E - Purchase Order Attachment - Acceptance of Offers 10% Below Statewide Term Contract Price
- Separately attached – Pricing Worksheet

## **APPENDIX A- Service Provider Security Assessment Questionnaire**

### **SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE**

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase "government information" shall have the meaning defined in the clause titled "Information Security." (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire - Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those of your employees and contractors who require access to perform your proposed services.



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2. Describe your disaster recovery and business continuity plans.

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3. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?

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4. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub -contractors

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5. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report

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6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained

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7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.

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8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.

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9. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?

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10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

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11. Describe your incident response policies and practices.

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12. Identify any third party which will host or have access to government information

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Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:

By: \_\_\_\_\_

(authorized signature)

Its: \_\_\_\_\_

(printed name of person signing above)

\_\_\_\_\_

(title of person signing above)

Date: \_\_\_\_\_

SPSAQ (FEB 2015) [09-9025-1]

#### Appendix B – Subcontractor Form

Please list all subcontractors who may be providing subcontracting services, furnishing materials, etc. for this contract. The list shall be submitted in the format provided below. If not applicable please state that subcontractors are not applicable.





## Appendix C, cont'd

**Distributor** means the generic category of entities authorized by Licensor, if any, that participate in the distribution chain between Licensor and Licensee, including, but not limited to, value added resellers (VARs), original equipment manufacturers (OEMs), distributors, dealers, independent sales organizations (ISOs), resellers, and retail outlets.

**Distributor Contract** means a contract between a Licensee and a Distributor by which Licensee can acquire licenses of the Software. Nothing in this agreement constitutes a representation or obligation that Licensor has made or will make its Software available through a Distributor.

**Documentation** means all materials supplied, directly or indirectly, to Licensees by Licensor, by any means or media that explain or facilitate the use of the Software, which may include, without limitation, any materials that describe the functional, operational, and/or performance capabilities of the Software; training materials; user, operator, system administration, technical, support, and other manuals or instructions; flow charts, and logic diagrams. Licensor warrants that the Documentation does and will continue to accurately describe the functional and operational characteristics of the Software. Licensor warrants that the Documentation will be contemporaneously updated to reflect any changes made to the Software.

**End User License Agreement ("EULA")** means any license agreement or other commercial agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Agreement, and including without limitation any such agreement that either is affixed to (e.g., shrinkwrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement. The term "EULA" does not include any contract awarded by or on behalf of a Licensee as a result of a formal solicitation (e.g., invitation for bids or request for proposals) issued by or on behalf of a licensee. The term "EULA" does not include a contract to the extent it governs software maintenance as defined in ISO/IEC 14764:2006.

**ITMO** means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended, or its successor in interest. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every South Carolina Governmental Body (as defined by S.C. Code Ann. § 11-35-310(18), as amended) covered by the South Carolina Consolidated Procurement Code. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. ITMO is not a party to this Agreement. Notwithstanding any other provision, ITMO bears no liability for any party's losses arising out of or relating in any way to this Agreement.

**Ordering and Confirming Documents** means those documents exchanged between a Licensee and the Licensor to memorialize the number and configuration of licenses ordered and provided, whether exchanged directly with Licensor or indirectly through a Distributor. By way of example, ordering documents may include a purchase order or other instrument submitted by Licensee, and confirming documents may include a software key or license-specific identifying information, an invoice, or another document submitted by Licensor.

**Prior Agreement** means a written agreement that was negotiated, signed using pen and paper, and executed by an authorized representative of a Licensee prior to the Effective Date of this Agreement.

**Procurement Contract** means any contract awarded pursuant to the Solicitation identified above by reference to its Solicitation Number and Solicitation Description.

**Software** means any computer program referenced on Exhibit "B", including any future service packs, maintenance updates, patches, fixes, or like modifications to the computer program by whatever name provided by Licensor, if any. In addition, Exhibit B excludes any computer program not identified in the Procurement Contract. For clarity, Exhibit B excludes all services, including without limitation, so-called "software-as-a-service" and "cloud services," application services, etc., even if included therein.



## Appendix C, cont'd

### Attachments

Exhibit A – [RESERVED]  
Exhibit B – Software List  
Exhibit C – Authorized EULAs

#### 1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.

1.1 Agreement to Authorized EULAs. Subject to the provisions of this Agreement, Licensee agrees to the terms and conditions of the Authorized EULAs. Any EULA that is not an Authorized EULA is void and of no effect. Licensor represents that every EULA applicable to the computer programs referenced on Exhibit "B" has been attached to Exhibit "C" as an Authorized EULA.

1.2 Primacy of Agreement. The terms of this Agreement shall be given full effect prior to the application of any term in the Authorized EULAs. To the extent of any inconsistency or conflict, the terms of this Agreement take precedence over any similar terms in any Authorized EULAs. To the extent an Authorized EULA provides Licensee with options or rights in addition to or beyond those available under this Agreement, nothing in this Agreement is intended to limit Licensee's exercise of such options or rights.

1.3 Entire Agreement. Within the scope of this Agreement, as defined in Paragraph 2, this Agreement, Exhibit "B" (the Software List), and the Authorized EULAs constitute the entire agreement between the Parties and supersede all other prior or contemporaneous agreements, representations, or discussions, whether oral or written. This Agreement and the Authorized EULAs shall apply notwithstanding any conflicting or additional provisions in Ordering or Confirming Documents.

#### 2. LIMITED SCOPE OF AGREEMENT.

2.1 This Agreement and the Authorized EULAs apply only to the use and licensing of Software by Licensee. All terms in an Authorized EULA regarding services (other than warranty services) are void.

2.2 Neither this Agreement nor an Authorized EULA authorize any Licensee to pay any funds directly to Licensor. All terms in a EULA regarding pricing, payment, interest, and delivery are void. This Agreement and the Authorized EULAs are independent of, and do not form a part of a Procurement Contract. Ordering and Confirming Documents may not be issued pursuant to an Authorized EULA, but must be issued pursuant to a Procurement Contract. Ordering and Confirming Documents form a part of this Agreement and the Authorized EULAs but only to the extent they memorialize the number of, configuration of, and prices paid for licenses ordered and provided. Ordering and Confirming Documents may not supplement, alter, or modify any provision of this Agreement or an Authorized EULA.

2.3 Subject to the limits of item 2.1, this Agreement and the Authorized EULAs apply to all licenses of Software licensed from Licensor by a Licensee during the term of this Agreement, whether acquired directly from Licensor or indirectly through a Distributor.

#### 3. TERM OF AGREEMENT.

3.1 With regard to the licensure of any particular copy of Software, the terms of this Agreement and the Authorized EULAs shall continue to apply to that license notwithstanding the expiration of this Agreement.

3.2 This Agreement shall be in effect for seven years from the Effective Date. Expiration of this Agreement does not terminate any particular license of Software.

#### 4. LICENSE GRANT.

## Appendix C, cont'd

4.1 Any rights granted by Licensor to Licensee in an Authorized EULA are in addition to any rights granted by this Paragraph 4. Licensor agrees that Licensee shall have the rights that are set forth in items 4.2, 4.3, 4.4, and 4.5 below.

4.2 For each license acquired, the Software may be:

4.2.1 Used or copied for use in or with the computer or computers for which it was acquired, including without limitation use at any of Licensee's installations to which such computer or computers may be transferred;

4.2.2 Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

4.2.4 Modified, adapted, or combined with other computer programs ~~or computer data bases~~; however, a Licensee may not reverse engineer, decompile or disassemble the Software except to the extent necessary to create interfaces to, or allow inter-operability with, other computer programs or computer data bases;

4.2.5 Disclosed to and used by support service contractors or their subcontractors for the benefit of the Licensee, subject to the restrictions set forth in this Agreement; and,

4.2.6 Used or copied for use in or transferred to a replacement computer.

4.3 Notwithstanding any other provision, Licensee's fair use rights (17 U.S.C. § 107) are not limited in any way.

### 5. INTELLECTUAL PROPERTY INFRINGEMENT.

5.1 As used in this Paragraph 5, these terms are defined as follows: "Acquired Item(s)" means the rights, Software, or services, if any, furnished under this Agreement or any Authorized EULA. "Affiliate" means any business connected with or related to Licensor. "Indemnitee" means Licensee, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. "IP Right(s)" means a copyright, patent, trademark, trade secret, or any other proprietary right.

5.2 In the event of any claim by any third party against an Indemnitee asserting or involving an IP Right which concerns any Acquired Item(s), Licensor shall defend Indemnitee, at its expense, against all actions, proceedings or claims of any nature and shall, without limitation, indemnify Indemnitee for and against any loss, cost, expense, attorneys' fees and expenses (including inside counsel), or liability, resulting from or related to such claim, whether or not such claim is successful.

5.3 Indemnitee must notify Licensor in writing within a reasonable period of time after Indemnitee first receives written notice of any such claim or action. Indemnitee's failure to provide or delay in providing such notice will relieve Licensor of its obligations under this Paragraph 5 only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such claim. Indemnitee must reasonably cooperate with Licensor's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow Licensor sole control of the defense, so long as the defense is diligently and capably prosecuted. Licensee may participate in Licensor's defense of any action. Except for an injunction limited to requiring the cessation of use of an Acquired Item that is the subject of a claim, Licensor may not, without Licensee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened claim or action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened claim or action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise



## Appendix C, cont'd

adversely affect an indemnitee. Licensee's consent is necessary for any settlement that requires Licensee to part with any right or make any payment or subjects Licensee to any injunction, except for an injunction requiring cessation of use of an Acquired Item that is the subject of the claim.

5.4 In the event an injunction, order, or agreement shall be obtained against Licensee's use of any Acquired Item, Licensor shall, without in any way limiting its other obligations under this Agreement and at its sole expense: (a) use good faith, diligent efforts to procure for Licensee the right to continue to use, and to have used, the Acquired Item, and if such remedy is commercially impracticable, to then (b) replace or modify the Acquired Item so that it becomes non-infringing but only if the modification or replacement does not materially adversely affect the functionality of the Acquired Item or its use by Licensee. In the event that both of these remedies are commercially impracticable, Licensor may require that Licensee stop using the Acquired Item, refund to Licensee an amount equal to all money paid by Licensee therefore, and take all steps necessary to have any Indemnitees released from any further liability.

5.5 Licensor's obligations under this Paragraph 5 do not apply to a claim to the extent (a) that the claim is caused by a modification of Software made by Licensee; (b) that the claim is caused by Licensee's use of a superseded release of Software if the infringement would have been avoided by Licensee's timely implementation of an update or upgrade previously provided to Licensee, but only if such update or upgrade (1) was provided by Licensor at no cost or as part of either maintenance or a previous purchase by Licensee, and (2) does not materially adversely affect the functionality of the Acquired Item or its use by Licensee; (c) that the claim is caused by Licensee combining the Software with another computer program or hardware unless such combinations are recommended by the Documentation or otherwise suggested by Licensor or its Affiliates; (d) that the claim is caused by Licensee reverse engineering, decompiling, or disassembling Software; (e) that the claim arises from Licensee's use of any Software that is open source or freeware, but only if the open source or freeware is not incorporated or combined by Licensor in Software provided by Licensor; (f) that the claim is caused (1) by modifications made to the Software by Licensor or its Affiliates in accordance with a detailed, exact statement of specifications furnished by Licensee unless Licensor or its Affiliates knew or should have known that compliance with the Licensee's specifications would infringe an IP right, or (2) by compliance by Licensor or its Affiliates with specifications furnished by Licensee if Licensee knowingly relied on a third party's product to develop the specifications provided to Licensor or its Affiliates and failed to identify such product to Licensor.

5.6 Notwithstanding any other provision, Licensor's obligations pursuant to this Paragraph 5 are without any limitation whatsoever. Licensor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

5.7 Paragraph 5 states Licensee's exclusive remedy for third party damages claims asserting a violation or infringement of the third party's intellectual property rights.

### 6. LIMITATION OF RECOVERY.

6.1 Limitation of Damages - Licensor. Except as provided in Paragraph 5 (Intellectual Property Infringement), Paragraph 7.1 (Right to Audit; Misuse of Data), and Paragraph 14.22 (Privacy), Licensor's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license the Software. The foregoing limitation applies to the exclusion of any other limitation or exclusion of the remedies available against Licensor, the liability of Licensor, or the damages recoverable from Licensor.

6.2 Limitation of Damages - Licensee. Except as provided in Paragraph 7.2 (Audit Remedy; Exclusivity), Licensee's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license Software. Licensee's total liability for any obligation arising under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. The foregoing limitations do not apply to a loss incurred by Licensor to the extent the loss results because

## Appendix C, cont'd

Licensee has created a derivative work from, reverse assembled, reverse compiled, or otherwise reduced to human readable form the Software without Licensor's prior written consent. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

### 7. AUDIT.

7.1 Right to Audit; Misuse of Data. Licensor has the right to audit Licensee at Licensor's expense. Licensor shall conduct an audit and use the information obtained in an audit only to enforce Licensor's rights under, and to determine whether Licensee is in compliance with, the terms of this Agreement and any Authorized EULAs. Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 30 days notice, during Licensee's normal business hours, and in a manner that does not interfere unreasonably with Licensee's operations. Licensor's sole audit right regarding Licensee is provided by this Paragraph 7. Notwithstanding any other provision, Licensor's liability for intentional breach of its obligation regarding the use of information obtained in an audit is without any limitation whatsoever.

7.2 Audit Remedy; Exclusivity. If an audit reveals or Licensor otherwise discovers unlicensed use of Software by Licensee, Licensee shall either (a) promptly order and pay for sufficient licenses to permit all Software usage discovered and pay Licensor the difference between (i) the license fees that Licensee should have paid for such Software, based upon actual usage, and (ii) the actual license fees that Licensee paid for the software, based upon the actual usage level for which such Software was licensed, or (b) immediately terminate any unlicensed use of Software and pay any applicable license fees for any noncompliance discovered. If a Distributor Contract exists, Licensee may order licenses from, and pay license fees to, a Distributor at a price established by a Distributor Contract. If Licensee's unlicensed use of the Software would be within the scope of license rights granted by this Agreement and the Authorized EULAs but for Licensee's failure to acquire an adequate number of licenses or an available license, Licensor's exclusive remedy for the unlicensed use shall be the remedy provided by this item 7.2. If Licensee fails to execute either option within a reasonable time, the foregoing remedy will not be considered exclusive.

7.3 Licensor's right to conduct an audit is limited by any applicable statutory or regulatory limitations on access to public records.

**8. LICENSEE'S RECORDS.** For each license of Software acquired pursuant to this Agreement, Licensee agrees to retain records of that license for one year beyond the duration of that license, provided that Licensee has no obligation to retain records of a license beyond one year after Licensee ceases to retain a copy of the Software to which a license applies. Licensor may access Licensee's records as provided in the South Carolina Freedom of Information Act and any other applicable law. Except as stated in this Agreement, Licensor agrees that Licensee has no obligation to retain any records.

**9. CONFIDENTIALITY & NONDISCLOSURE.** This Agreement and the Authorized EULAs are subject to public disclosure. All provisions of an Authorized EULA regarding confidentiality or nondisclosure are subject to the South Carolina Freedom of Information Act and other applicable laws. Any duty of confidentiality or nondisclosure established by an Authorized EULA applies only to Software and Documentation that has been conspicuously marked with the words confidential, proprietary, or trade secret.

**10. TERMINATION.** Licensor may not terminate either this Agreement or the Authorized EULAs in the absence of a breach by Licensee that would, under the common law, be material. Any termination by Licensor must be preceded by adequate notice and opportunity to cure. If Licensor exercises any termination rights under any Authorized EULA, Licensee may, in addition to any rights provided in the Authorized EULAs, continue using software pursuant to this Agreement and the Authorized EULAs for a period of six months in order to allow Licensee to convert from the use of Software, unless Licensee has violated the restrictions in paragraph 4.2.4. During the conversion period, and to the extent applicable



## Appendix C, cont'd

Licensee shall pay any applicable, previously unpaid license fees at the price last available from Licensor to Licensee prior to termination or, at Licensee's option, at the price established by an applicable Distributor Contract, if any.

**11. WARRANTIES.** The warranties provided in this Paragraph 11 are in addition to any other warranties provided in the Authorized EULAs. Licensor warrants (a) that every item of Software, without unauthorized modification, will perform substantially in accordance with the Documentation applicable to the Software for a period of 365 days from the date the item of Software is installed by Licensee; (b) that Licensor has all necessary right and authority to license the Software and to grant the licenses provided hereunder; and (c) that there is currently no actual or threatened legal action against Licensor by any third party based on an alleged violation of an intellectual or proprietary property right that has not been disclosed to ITMO and that could adversely affect Licensor's ability to license the use of the Software. Licensor agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Licensee.

## 12. BANKRUPTCY.

**12.1 Notice of Insolvency.** Licensor shall provide ITMO and Licensee with written notice immediately upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against Licensor under the relevant law on insolvency or bankruptcy, or after the making by Licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Licensor's business or for the termination of its corporate charter.

**12.2 Rejection of Executory License.** The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the Licensor under the relevant law on insolvency or bankruptcy, this Agreement and the Authorized EULAs shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Agreement or the Authorized EULAs pursuant to bankruptcy law, Licensee shall have the option of using the Software for either the original term of the Authorized EULAs or a period of five years after rejection is requested.

**13. RIGHTS TO SOFTWARE OR DATABASE DEVELOPED BY LICENSEE.** Nothing in this Agreement or any Authorized EULA shall be construed to give Licensor any rights with regard to computer programs developed by Licensee, regardless of whether or not such programs are connected to or embedded in Software or are functionally similar, in whole or part, to Software. Nothing in this paragraph grants a Licensee any rights to Licensor's intellectual property or to any derivative works.

## 14. GENERAL

**14.1 Choice of Law & Choice of Forum.** Both the rights and obligations of the Parties and this Agreement and any EULA, as well as any dispute, claim, or controversy arising out of or relating to this Agreement or any EULA, shall, in all respects, be established, interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, without regard to any provision governing conflicts of law. All disputes, claims, or controversies arising out of or in any way relating to this Agreement or any EULA shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina.

**14.2 Sovereign Immunity.** Title 11, Chapter 35, Article 17 constitutes a limited statutory waiver of sovereign immunity. Notwithstanding paragraph 14.1, Licensor agrees that neither this Agreement, any Authorized EULAs, nor any act by either ITMO or Licensee regarding this Agreement or any EULA is a waiver of either their sovereign immunity or their immunity under the Eleventh Amendment of the United States Constitution.

Appendix C, cont'd

14.3 Subject to Applicable Law. This Agreement is entered into pursuant to the South Carolina Consolidated Procurement Code (Title 11, Chapter 35 of the South Carolina Code of Laws.) As a public entity, all of Licensee's obligations are subject to any applicable laws.

14.4 Alternative Dispute Resolution. No method of mandatory alternative dispute resolution shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement or the Authorized EULAs.

14.5 CISG / UCITA. Neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act (nor any non-uniform version) shall apply to this Agreement or the Authorized EULAs.

14.6 ITMO Participation In Contract Disputes. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. Accordingly, ITMO is not a party to this Agreement and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of ITMO are acting solely in their official capacity and need not be joined as a party to any dispute that may arise out of this Agreement.

14.7 Notices. In addition to any other obligations the parties may have regarding notice, all **notices or other communications regarding termination, material breach, modification, or audit of this Agreement, an Authorized EULA, or a license covered by either shall be copied to ITMO at the following address.**

Information Technology Management Office  
Procurement Services Division  
State Budget & Control Board  
1201 Main Street, Suite 600  
Columbia, SC 29201

14.8 Third Party Beneficiary. This Agreement and the Authorized EULAs are made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement or the Authorized EULAs as a third party beneficiary or otherwise.

14.9 Assignment. Except as set forth below, neither party may assign or transfer this Agreement, the Authorized EULAs, or any rights regarding either, without the prior written consent of ITMO. Reference S.C. Code Ann. Regs § 19-445.2180. Such consent shall not be unreasonably withheld. Any attempted assignment, delegation or transfer in derogation of this Paragraph shall be null and void.

14.9.1 This Agreement and the Authorized EULAs, and any rights regarding either, may be assigned to an affiliates of the Licensor, or to successors-in-interest of substantially all the assets of the Licensor, if the assignee expressly assumes the Licensor's obligations under the assigned agreement. Licensor must give Licensee reasonable prior notice of any assignment. As used in this item, affiliate means a legal entity that controls, is controlled by, or is under common control with Licensor.

14.9.2 If Licensee is reorganized such that certain operations or functions are transferred from Licensee to a different public procurement unit, then in connection with such reorganization, a Licensee may, upon written notice to Licensor, transfer licenses to another public procurement unit provided that the transferee is performing some substantially similar business and/or operational functions as the original Licensee. Both entities shall execute such paperwork as Licensor may reasonably require.

14.10 Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Agreement.





## Appendix C, cont'd

14.11 Headings. The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

14.12 Publicity. Licensor agrees not to refer to Licensees in such a manner as to state or imply that either Licensor or its Software is endorsed or preferred by Licensee, the State of South Carolina, or any unit of either. The foregoing shall not prohibit the Licensor from identifying a Licensee as a customer in a customer list.

14.13 Relationship Among Public Entities. Each Licensee's obligations and liabilities are independent of every other Licensee's obligations and liabilities. Termination of one Licensee does not constitute grounds for termination of a different Licensee.

14.14 Language of Agreement & Notices. The language of this Agreement is English. If translated into another language, this English version of the Agreement shall be controlling. All notices required or permitted to be given hereunder shall be written in the English language.

14.15 Survival of Obligations. The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Intellectual Property Infringement, Limitation of Recovery, Audit, Bankruptcy, and General.

14.16 Waiver & Modification. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement and the Authorized EULAs may not be modified or waived except by another agreement in writing executed by an authorized representative of Licensee and an authorized representative of Licensor.

14.17 Anti-Indemnification & Anti-Representation. Any provision in the Authorized EULAs is void to the extent it imposes an obligation upon ITMO or a Licensee that would properly be characterized as an indemnity. Licensee makes no representations or warranties to Licensor, and any language to the contrary is void.

14.18 Statute of Limitations. Any provision in the Authorized EULAs is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.

14.19 Non-appropriations. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

14.20 Attorneys' Fees. Except as otherwise provided in this Agreement, each party waives any claim it may have to recover attorneys' fees from any other party.

14.21 Users. A Licensee has no liability for any acts or omissions of any person that Licensee allows to use the Software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Licensee.

14.22 Privacy. As used in this paragraph, the term 'data' means any information regarding any person or entity other than a Licensee that is gathered or acquired as a result of the Software licensed by Licensee being used. Except to the extent fully disclosed in writing (e.g., a privacy policy or the Documentation) prior to execution of this Agreement, Licensor represents that Software will not provide any entity other than Licensor with any data. Notwithstanding anything to the contrary, Licensor agrees (i) not to use or retain data for any purpose other than performing this contract, except to the extent that using or retaining state data is incidental to contract administration, such as financial, administrative, cost or pricing, and (ii) not to sell, trade, or release data. Upon request, Licensor shall provide written confirmation of compliance with this clause. Licensor agrees that Licensee has no adequate remedy at



Appendix C, cont'd

law for a violation of Licensor's obligations under this paragraph. Notwithstanding any other provision, Licensor's liability for breach of its obligation under this paragraph is without any limitation whatsoever.  
[09-9030-1]

--- end of Piggyback ---

Appendix D - Software table

	Name of Software Product	Name of Software Product's Licensor	Contractor licenses or sublicenses Software Product directly to State	Contractor "resells" or distributes Software Product
1				
2				
3				
4				
5				
6				
7				

[09-9035-1]



## Appendix E

### Purchase Order Attachment

#### Acceptance of Offers 10% Below Statewide Term Contract Price

Term Contract Solicitation No.	Term Contract Description
Term Contract Contractor	Purchase Order No.

*Instructions: If an agency purchases any item available on the Term Contract identified below from a business (an Alternate Vendor) other than the Term Contract Contractor and the total price of the purchase order exceeds \$500, then the procurement officer making the purchase must attach this form to the purchase order issued to the Alternate Vendor. The agency procurement officer must complete the following four blanks: the number and description of the applicable Term Contract, the number of the agency's Purchase Order, and the name of Term Contract Contractor that you offered an opportunity to match.*

#### Agreement

By signing this document, Alternate Vendor is entering into a contract with the agency named above regarding the items referenced on Purchase Order identified above. Regarding the items acquired with the Purchase Order, Alternate Vendor agrees to be bound by all the terms and conditions of the Term Contract Solicitation identified above. Alternate Vendor has received and read a copy of the Term Contract Solicitation identified above. The Purchase Order may be used to elect only those options expressly allowed in the Term Contract Solicitation. Possible options might include quantity, item, delivery date, and payment method. Any contract resulting from this Purchase Order is limited to the documents identified in the clause entitled Contract Documents & Order of Precedence.

NAME OF ALTERNATE VENDOR  (full legal name of business entering this contract)	STATE VENDOR NO.  (Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> )
AUTHORIZED SIGNATURE  (person authorized to enter binding contract on behalf of Alternate Vendor)	TITLE  (business title of person signing)
PRINTED NAME  (printed name of person signing above)	DATE SIGNED

#### Certification of Compliance

I certify as follows: (1) every item acquired with the Purchase Order is priced at least ten percent less than the Term Contract price for the same item; (2) the Term Contract Contractor identified above declined to meet the prices stated on the Purchase Order after being offered a reasonable opportunity to meet the price stated on the Purchase Order; and, (3) this purchase complies with Section 11-35-310(35), which is reprinted below.

AUTHORIZED SIGNATURE  (procurement officer authorized to issue purchase order and sign certification)	TITLE  (business title of person signing)
PRINTED NAME  (printed name of person signing above)	DATE SIGNED

Section 11-35-310(35) of the South Carolina Code of Laws reads as follows: "'Term contract' means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the

governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi term contract as provided in Section 11-35-2030."

----- PURCHASE ORDER ATTACHMENT (APR 2015) -----

#### **IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

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Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: <https://dor.sc.gov>

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING"



[09-9005-3]

#### OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

[09-9010-1]